



U.S. Department of Justice

*United States Attorney
District of New Jersey*

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RF/CAH/PL AGR
2008R00515

August 23, 2016

John Azzarello, Esq.
Whipple Azzarello LLC
161 Madison Ave., #325,
Morristown, NJ 07960

Anthony Ricco, Esq.
20 Vesey St., # 400,
New York, NY 10007

Re: Plea Agreement with Malik Lowery

Dear Mr. Azzarello and Mr. Ricco:

This letter sets forth the plea agreement between your client, Malik Lowery, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Malik Lowery, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, to Counts One (Racketeering Acts Four, Eight, Nine, Ten, Twelve and Thirteen), Two, Thirteen, Fifteen, and Twenty-Seven of the Second Superseding Indictment, Criminal Number 12-298 (ES), which charges Malik Lowery with racketeering, racketeering conspiracy, carjacking, Hobbs Act Robbery and drug conspiracy, in violation of Title 18, U.S.C. §§ 1962(c), 1962(d), 2119, and 1951(a), and Title 21, U.S.C. § 846. If Malik Lowery enters a guilty plea and is sentenced on these charges, consistent with the stipulated range under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and otherwise fully complies with all of the terms of this agreement, this Office will move, at the time of sentencing, to dismiss the other pending charges as to Malik Lowery, namely, Counts Six, Fourteen, and Sixteen of the Second Superseding Indictment, and will not initiate any further criminal charges against Malik Lowery for his

crimes committed during his association with and participation in the activities of the criminal organization referred to in the Second Superseding Indictment as the South Side Cartel, an Enterprise as defined in 18 U.S.C. § 1961, during the time period charged in the Second Superseding Indictment.

As part of his plea agreement, as to Counts One and Two, the defendant admits that he knowingly and intentionally committed the following six acts:

Count One, Racketeering Act Four, Count Two, Overt Acts aa through ff (Murder of A.B.) alleges that on or about October 20, 2007, in Essex County, in the District of New Jersey and elsewhere, defendant did purposely and knowingly cause the death and serious bodily injury resulting in death of another person, specifically A.B., in violation of N.J.S.A. Sections 2C:11-3(a)(1) & (2) and 2C:2-6;

Count One, Racketeering Act Eight, Count Two, Overt Act jj (Robbery of BMW Vehicle) alleges that on or about January 3, 2008, in Essex County, in the District of New Jersey and elsewhere, defendant in the course of committing a theft of a 2008 BMW, threatened another person with, and purposely put another person in fear of immediate bodily injury, in violation of N.J.S.A. 2C:15-1(a)(2) and 2C:2-6;

Count One, Racketeering Act Nine, Count Two, overt act kk (Robbery of T.H.) alleges that on or about February 3, 2008, in Essex County, in the District of New Jersey and elsewhere, defendant, in the course of committing a theft, threatened another person, that is, T.H., with, and purposely put T.H. in fear of immediate bodily injury, in violation of N.J.S.A. 2C:15-1(a)(2) and 2C:2-6;

Count One, Racketeering Act Ten, Count Two, overt acts mm and oo (Drug Distribution) alleges that between on or about February 3, 2008 through on or about February 8, 2008, in Essex County, in the District of New Jersey and elsewhere, defendant did knowingly and intentionally distribute and possess with the intent to distribute a mixture or substance which contained cocaine and cocaine base of cocaine base ("crack cocaine"), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (B)(1)(C) and Title 18, United States Code, Section 2.

Count One, Racketeering Act Twelve, Count Twenty-Seven (Drug Conspiracy) alleges that from at least as early as in or about July 2003 through in or about July 2010, in Essex County, in the District of New Jersey and elsewhere, defendant did knowingly and intentionally conspire and agree with each other and others to distribute and to possess with the intent to distribute 280 grams of cocaine base ("crack cocaine"), a Schedule II controlled substance, and one kilogram or more of heroin, a Schedule I controlled substance, contrary to Title 21, United States Code, Sections 841(a)(1) and (B)(1)(A), in violation of Title 21, United States Code, Section 846.

Count One, Racketeering Act Thirteen, Overt Acts d and f (Drug Distribution) alleges that on or about March 25, 2004, in Essex County, in the District of New Jersey and elsewhere, defendant did knowingly and intentionally distribute and possess with the intent to distribute a mixture or substance which contained a detectable amount of cocaine base, ("crack cocaine"), a Schedule II controlled substance, and a mixture and substance which contained a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 2, United States Code, Sections 841(a)(1) and (B)(1)(C) and Title 18, United States Code, Section 2.

All in violation of Title 18, United States Code, Sections 1962(c) and 1962(d), and Section 2.

However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, Malik Lowery agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Malik Lowery may be commenced against him, notwithstanding the expiration of the limitations period after Malik Lowery signs the agreement.

Should the Court at any time reject the plea under Federal Rule of Criminal Procedure 11(c)(1)(C) or act contrary to its terms, either party may elect to be relieved of the terms of this plea and the parties will be returned to the status prior to the entry of the plea.

Sentencing

The violation of 18 U.S.C. § 1962(c) charged in Count One to which Malik Lowery agrees to plead guilty carries a statutory maximum prison sentence of life.

The violation of 18 U.S.C. § 1962(d) charged in Count Two to which Malik Lowery agrees to plead guilty carries identical penalties as those which may be imposed for his violation of 18 U.S.C. § 1962(c), that is, up to life in prison.

The violation of 18 U.S.C. § 2119 charged in Count Thirteen to which Malik Lowery agrees to plead guilty carries a statutory maximum prison sentence of 15 years.

The violation of 18 U.S.C. § 1951(a) charged in Count Fifteen to which Malik Lowery agrees to plead guilty carries a statutory maximum prison sentence of 20 years.

The sentence on each count may run consecutively. Fines imposed by the sentencing judge may be subject to the payment of interest.

The above violations under Title 18 carry a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

The violation of Title 21 U.S.C. § 846 charged in Count Twenty-Seven to which Malik Lowery agrees to plead guilty carries a statutory minimum prison sentence of 20 years¹ and a maximum prison sentence of life.

The above violation of Title 21 carries a statutory maximum fine of \$8,000,000.

The sentence on each count may run consecutively. Fines imposed by the sentencing judge may be subject to the payment of interest.

The United States Sentencing Guidelines are advisory, not mandatory.

Further, in addition to imposing any other penalty on Malik Lowery, the sentencing judge: (1) will order Malik Lowery to pay an assessment

¹ The Government previously filed an Enhanced Penalty Information, which will be withdrawn prior to entry of Malik Lowery's plea. A Superseding Enhanced Penalty Information will be filed, which makes the mandatory minimum sentence under this count 20 years' imprisonment.

of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Malik Lowery to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Malik Lowery, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; (4) must order forfeiture, pursuant to 18 U.S.C. § 982 and 21 U.S.C. § 853; (5) may deny Malik Lowery certain statutorily defined benefits, pursuant to 21 U.S.C. §§ 862 and 862a and (6) must require Malik Lowery to serve a term of supervised release as follows: pursuant to 21 U.S.C. § 841(a)(1), at least ten years for Count Twenty-Seven of the Second Superseding Indictment; pursuant to 18 U.S.C. § 3583, at least five years for each of Counts One and Two of the Second Superseding Indictment and at least 3 years for each of Counts Thirteen and Fifteen of the Second Superseding Indictment, each of which will begin at the expiration of any term of imprisonment imposed.

Should Malik Lowery be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Malik Lowery may be sentenced to not more than 5 years' imprisonment for Counts One, Two, and Twenty-Seven of the Second Superseding Indictment, and not more than 2 years' imprisonment for counts Thirteen and Fifteen of the Second Superseding Indictment, in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

This Office and Malik Lowery agree that, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence to be imposed on Malik Lowery, should be as follows: (1) a sentence between twenty-five (25) and thirty (30) years (300 to 360 months) imprisonment for both Counts One and Two of the Second Superseding Indictment to run concurrently to each other and all other counts of conviction; (2) a sentence of 15 years (180 months) imprisonment for Count Thirteen to run concurrently to all other counts of conviction, (3) a sentence of 20 years (240 months) imprisonment for Count Fifteen to run concurrently to all other counts of conviction; (4) a sentence of 20 years (240 months) for Count Twenty-Seven to run concurrently with all other counts of conviction. Additionally, a term of supervised release of at least 10 years for Count Twenty-Seven to run concurrently with all other terms of supervised release. Pursuant to Rule 11(c)(1)(C), this Office and Malik Lowery agree that a sentence of between 25 and 30 years and ten years supervised release is the appropriate disposition of this case and constitutes a reasonable sentence that is sufficient, but not greater than necessary, taking into account all of the

factors set forth in 18 U.S.C. § 3553(a). If the Court accepts this plea agreement, then Malik Lowery must be sentenced accordingly. If the Court accepts this plea agreement, this Office will argue for a sentence of 30 years' imprisonment at the time of sentencing.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Malik Lowery by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Malik Lowery's activities and relevant conduct with respect to this case.

Stipulations

This Office and Malik Lowery agree to stipulate at sentencing to the statements set forth in the attached Schedule A, including that the appropriate sentence to be imposed is between 25 years (300 months) and 30 years (360 months) imprisonment, regardless of the advisory range under the United States Sentencing Guidelines. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence.

The stipulations concerning the appropriate sentence in this case are offered as a recommendation to the Court, and it binds the Court once, and if, the Court accepts this plea agreement.

These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Malik Lowery waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offenses regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Malik Lowery. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil or administrative proceeding against Malik Lowery.

No provision of this agreement shall preclude Malik Lowery from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Malik Lowery received constitutionally ineffective assistance of counsel.

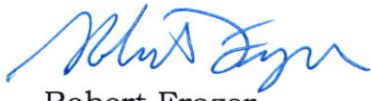
No Other Promises

This agreement ("the Plea Agreement") constitutes the plea agreement between Malik Lowery and this Office relating to the Counts contained in the Second Superseding Indictment. This Plea Agreement supersedes any previous agreements between Malik Lowery and this Office.


Other than the Plea Agreement, no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

Paul J. Fishman
United States Attorney


By: Robert Frazer
Courtney A. Howard
Assistant U.S. Attorneys

APPROVED:


Thomas J. Eicher
Chief, Criminal Division

I have received this letter from my attorneys, John Azzarello, Esq. and Anthony Ricco, Esq. I have read it. My attorneys and I have discussed it and all of its provisions, including those addressing the charges, sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:

Malik Lowery

Date:

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charges, sentencing, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.

John Azzarello, Esq.

Date:

Anthony Ricco, Esq.

Date:

Plea Agreement With Malik Lowery

Schedule A

1. This Office and Malik Lowery recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Malik Lowery nevertheless agree to the stipulations set forth herein, and agree that the Court must sentence Malik Lowery within the stipulated range of 300 to 360 months under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. This Office and Malik Lowery further agree that neither party will argue for the imposition of a sentence outside the agreed upon range.

2. The version of the United States Sentencing Guidelines effective November 1, 2015 applies in this case.

RACKETEERING AND RACKETEERING CONSPIRACY

3. Since the underlying racketeering activity for Counts One and Two of the Second Superseding Indictment is the same, the U.S.S.G. analysis is the same.

4. The applicable guideline for the violation of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d) set forth in Counts One and Two of the Second Superseding Indictment is U.S.S.G. § 2E1.1.

5. That guideline carries a Base Offense Level equal to the greater of 19 or the offense level applicable to the underlying racketeering activity. See U.S.S.G. § 2E1.1(a).

6. Where there is more than one underlying offense, each underlying offense is treated as if contained in a separate count of conviction for the purposes of U.S.S.G. § 2E1.1(a)(2). See U.S.S.G. § 2E1.1, comment. (n.1).

7. The sentence for the Counts to which Malik Lowery has pled guilty pursuant to the Plea Agreement is subject to the grouping rules set forth in U.S.S.G. § 3D1.1. See U.S.S.G. § 3D1.1, Application Note 1.

8. The counts of conviction involved in the Second Superseding Indictment constitute four separate Groups pursuant to U.S.S.G. § 3D1.2.

A. GROUP ONE - Count One, Racketeering Act Four, Count Two, Overt Acts aa through ff (Murder of A.B.)

9. Pursuant to U.S.S.G. § 3D1.2, Count One, Racketeering Act Four of the Second Superseding Indictment does not group with any of the other counts of conviction and therefore it will constitute its own group.

10. For Count One, Racketeering Act Four, the underlying racketeering activity is murder, contrary to N.J.S.A. §§ 2C:11-3(a)(1) & (2), and N.J.S.A. § 2C:2-6. Where the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used. See U.S.S.G. § 2E1.1, comment. (n.2). Here, the state offense of murder is most analogous to 18 U.S.C. § 1111 (Murder). The applicable guideline for § 1111 is U.S.S.G. § 2A1.1 (Murder). That guideline carries a Base Offense Level of 43.

11. Since the Base Offense Level is greater than 19, the offense level applicable to the underlying racketeering activity is 43. See U.S.S.G. § 2E1.1(a).

B. GROUP TWO - Count One, Racketeering Act Eight, Count Two, Overt Act jj, and Count Thirteen (Robbery of BMW Vehicle)

12. Racketeering Act Eight and Count Thirteen of the Second Superseding Indictment group together as they involve the same acts (carjacking of the BMW vehicle). U.S.S.G. § 3D1.2(a).

13. For Count One, Racketeering Act Eight, the underlying racketeering activity is the robbery of a Mercedes Benz Vehicle, in violation of N.J.S.A. § 2C:15-1(a)(2) and 2C:2-6. Where the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used. See U.S.S.G. § 2E1.1, comment. (n.2). Here, the state offense of robbery is most analogous to 18 U.S.C. § 2119 (1) (Carjacking). The applicable guideline for § 2119(1) is U.S.S.G. § 2B3.1 (Robbery). That guideline carries a Base Offense Level of 20.

14. Specific Offense Characteristic U.S.S.G. § 2B3.1(b)(2)(C) applies to Group Two because a firearm was brandished and possessed. This Specific Offense Characteristic results in an increase of 5 levels.

15. Specific Offense Characteristic U.S.S.G. § 2B3.1(b)(5) applies to Group Two because the offense involved carjacking. This Specific Offense Characteristic results in an increase of 2 levels.

16. Since the Base Offense Level is greater than 19, the offense level applicable to Group Two is 27. See U.S.S.G. § 2E1.1(a).

17. Accordingly, the offense level for Group Two is 27.

C. GROUP THREE - Count One, Racketeering Act Nine, Count Two, Overt Act
kk, and Count Fifteen (Robbery of T.H.)

18. Racketeering Act Nine and Count Fifteen of the Second Superseding Indictment group together as they involve the same acts (robbery of T.H.). U.S.S.G. § 3D1.2(a).

19. For Count One, Racketeering Act Nine, the underlying racketeering activity is the robbery of T.H., in violation of N.J.S.A. § 2C:15-1(a)(2) and 2C:2-6. Where the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used. See U.S.S.G. § 2E1.1, comment. (n.2). Here, the state offense of robbery is most analogous to 18 U.S.C. § 1951(a). The applicable guideline for § 1951(a) is U.S.S.G. § 2B3.1 (Robbery). That guideline carries a Base Offense Level of 20.

20. Specific Offense Characteristic U.S.S.G. § 2B3.1(b)(2)(C) applies to Group Three because a firearm was brandished and possessed. This Specific Offense Characteristic results in an increase of 5 levels.

21. Since the Base Offense Level is greater than 19, the offense level applicable to Group Three is 25. See U.S.S.G. § 2E1.1(a).

22. Accordingly, the offense level for Group Three is 25.

D. GROUP FOUR - Count One, Racketeering Acts Ten, Twelve and Thirteen
and Count Twenty-Seven (Drug Distribution and Drug Conspiracy)

23. Racketeering Acts Ten, Twelve and Thirteen, and Count Twenty-Seven of the Second Superseding Indictment group together as the offense levels are determined on the basis of the quantity of controlled substances. U.S.S.G. § 3D1.2(d).

24. Racketeering Acts Ten and Thirteen constitute acts in the drug conspiracy and therefore are not counted separately from the drug conspiracy.

25. Count Twenty-Seven and Count One, Racketeering Act Twelve, charge the same drug conspiracy, that is, a conspiracy to distribute and possess with the intent to distribute one kilogram or more of heroin and 280 grams or more of crack cocaine, contrary to 21 U.S.C. § 841(a) & (b)(1)(A), in violation of 21 U.S.C. § 846. The applicable guideline for § 841(a) & (b)(1)(A) and 846 is U.S.S.G. § 2D1.1(c)(5).

26. This guideline carries a Base Offense Level of 30.

27. Since the Base Offense Level is greater than 19, the offense level applicable to the underlying racketeering activity is 30. See U.S.S.G. § 2E1.1(a).

28. Accordingly, the offense level for Group Four is 30.

FINAL GROUPING ANALYSIS

29. The seven groups therefore have the following Guideline Levels:

Group One: Level 43

Group Two: Level 27

Group Three: Level 25

Group Four: Level 30

30. Pursuant to U.S.S.G. § 3D1.4(a), since Group One has the highest offense level, Group One counts as one Unit.

31. Pursuant to U.S.S.G. § 3D1.4(c), since Groups Two through Four are 9 or more levels less serious than the Group with the highest offense level (Group One), Groups Two through Four are disregarded and will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level.

32. Pursuant to U.S.S.G. § 3D1.4, adding one Unit results in an increase of one offense level.

33. As a result, the Guideline offense level applicable to Malik Lowery is 44.

ACCEPTANCE OF RESPONSIBILITY

34. As of the date of this letter, Malik Lowery has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Malik Lowery's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

35. As of the date of this letter, Malik Lowery has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying authorities of her intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Malik Lowery enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition Malik Lowery's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Malik Lowery will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

AGREED TOTAL GUIDELINES OFFENSE LEVEL

36. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Malik Lowery is 41 (the "agreed total Guidelines offense level").

37. In accordance with the above, taking into account the factors set forth in 18 U.S.C. § 3553(a), and pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that, regardless of the agreed total Guidelines offense level: (i) a sentence of imprisonment of 300 to 360 months and ten years' supervised release is reasonable under 18 U.S.C. § 3553(a); (ii) neither party will argue for a sentence of imprisonment above or below the range of 300 to 360 months and ten years' supervised release. Furthermore, should the Court reject this agreement, either party may elect to be relieved of the terms of this plea and the parties will be returned to the status prior to the entry of the plea.

38. Malik Lowery knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if the plea is accepted and the sentence is in accordance with the terms of this agreement. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if the plea is accepted and the sentence is in accordance with the terms of this agreement. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

39. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.